

Message Text

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CINCPACREPHIL

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TAGS: MARR, RP

SUBJECT: 10TH QUARTERLY MEETING OF US/RP CRIMINAL JURISDICTION

IMPLEMENTATION COMMITTEE: GOP VIEWS ON OFFICIAL DUTY/

LAW INFORCEMENT ISSUES

SUMMARY: REPORT OF 10TH QUARTERLY MEETING OF US/RP CRIMINAL JURISDICTION IMPLEMENTATION COMMITTEE. TEN OFFICIAL DUTY CERTIFICATES WERE ON AGENDA AND ALL RESOLVED. DEPT OF JUSTICE REVEALED CONCERN OVER CERTAIN ASPECTS OF US LAW INFORCEMENT ACTIVITIES IN CONNECTION WITH CASES INVOLVING OFFICIAL DUTY. DISCUSSION RESULTED IN VARIOUS SUGGESTIONS TO RESOLVE PROBLEMS IN THIS AREA. END SUMMARY

1. INTRODUCTION: 10TH QUARTERLY MEETING OF CJIC WAS LIMITED OFFICIAL USE

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HELD AT DEPT OF JUSTICE ON 11 FEB 1975. MEETING WAS

OF PARTICULAR IMPORTANCE AS A TOTAL OF TEN CASES INVOLVING ISSUANCE OF OFFICIAL DUTY CERTIFICATES WERE ON AGENDA. UNDERSECRETARY OF JUSTICE MACARAIG HAD BEEN INVITED TO MEETING AND TOOK ACTIVE ROLE. TWO OFFICIAL DUTY CASES WERE HELD OVER FROM 9TH CJIC MEETING (20 DEC 1974), ANOTHER SIX HAD BEEN SUBJECT OF DIPLOMATIC NOTES TO EMB FROM DFA REQUESTING CONSULTATIONS, AND TWO HAD BEEN PUT ON AGENDA BY US PANEL IN ANTICIPATION POSSIBLE QUESTIONS. FACTS IN ALL TEN OFFICIAL DUTY CASES WERE DISCUSSED THOROUGHLY AND CASES WERE SATISFACTORILY RESOLVED. DEPT OF JUSTICE STATED ITS NEED FOR CONSULTATION HAD BEEN FULFILLED IN NINE CASES, AND ONE CASE WAS CONSIDERED MOOT AS SETTLEMENT OF CIVIL DAMAGES HAD BEEN ACCOMPLISHED AND CHARGES DISMISSED.

2. THE ATMOSPHERICS OF LAW ENFORCEMENT: THERE WAS MOST PROTRACTED AND ANALYTICAL DISCUSSION OF OFFICIAL DUTY DOCTRINE WHICH HAS OCCURRED IN SOME TIME BETWEEN US RP EXPERTS AND REVEALED THREE IMPORTANT CONSIDERATIONS THAT MOTIVATE PHIL GOVT IN ITS ACTIONS AND REACTIONS ON OFFICIAL DUTY MATTERS. THEY COULD BE SUMMARIZED AS: (1) OBJECTION TO US MILITARY LAW ENFORCEMENT AUTHORITIES CONDUCTING CRIMINAL INVESTIGATIONS OFF BASE INVOLVING PHIL NATIONALS WITHOUT COOPERATION OF LOCAL PHIL POLICE; (2) DETENTION OF PHIL NATIONALS ARRESTED OR QUESTIONED ON BASE BEYOND MINIMAL TIME NEEDED TO TURN OVER TO APPROPRIATE PHIL LAW ENFORCEMENT AUTHORITIES; AND (3) ALLEGED DEROGATORY REMARKS BY US AUTHORITIES AT TIME OF ON-BASE ARRESTS OR QUESTIONING OF LOCAL NATIONALS.

3. LAW ENFORCEMENT ACTIVITY OFF BASE: TWO GATE INCIDENTS AT SUBIC AND ONE SEARCH, BY ACQUIESCENCE, OF PHIL NATIONAL'S OFF-BASE HOME BY OSI AGENTS FROM CLARK BROUGHT THIS ISSUE OUT. GOP HAD QUESTIONED DUTY CERTIFICATES ARISING FROM SUBIC GATE INCIDENT UNDER ERRONEOUS IMPRESSION THAT INCIDENTS HAD ORIGINATED OFF BASE AND PHIL NATIONALS WERE ARRESTED BY US AUTHORITIES AND FORCEFULLY BROUGHT ON BASE. FACTS REVEALED THAT LIMITED OFFICIAL USE

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SUBIC MAIN GATE LOCATED WITHIN BOUNDARIES OF BASE BUT ACTUAL BASE BOUNDARIES GO BEYOND GATE AND INCLUDE BRIDGE CONNECTING OLONGAPO CITY. NO SIGNS OR OTHER INDICATIONS ARE PRESENT THAT REFLECT THIS AREA TO BE PART OF BASE. PHIL NATIONALS CROWD UP TO GATE, AND IT IS NOT CLEAR THEY FULLY AWARE THAT THEY ARE ON BASE PROPERTY. SECRETARY MACARAIG SUGGESTED BOUNDARIES BE APPROPRIATELY POSTED AND ASSISTANCE OF OLONGAPO CITY POLICE BE

OBTAINED TO KEEP INGRESS AND EGRESS FROM BASE OPEN. OLONGAPO CITY FISCAL STATED HE WOULD ASSIST IN OBTAINING APPROPRIATE COORDINATION WITH CITY POLICE. (RECENT REPORT FROM SUBIC LAW CENTER INDICATES THIS HAS BEEN ACCOMPLISHED.) MACARAIG WAS PARTICULARLY CONCERNED WITH OSI CASE WHICH HE TOOK TO MEAN US LAW ENFORCEMENT PEOPLE MAKING INVESTIGATIONS OF PHIL NATIONALS OFF BASE. WHILE HE STATED THAT HE FULLY EXPECTED US AUTHORITIES TO COMPLY WITH PHIL LAW IN ALL CASES, HE RECOGNIZED THAT WE DID HAVE SOME LEEWAY ON OFF-BASE INVESTIGATION IF IT SOLELY INVOLVED MBA PERSONNEL; HOWEVER, WHEN PHIL NATIONALS WERE BEING INVESTIGATED HE EXPECTED PHIL LAW ENFORCEMENT PEOPLE TO PARTICIPATE. HE STATED NOT ONLY WAS THIS FOR OUR OWN LEGAL PROTECTION BUT ALSO ISSUE OF IMPAIRMENT OF PHIL SOVEREIGNTY WAS INVOLVED.

4. DETENTION OF PHIL NATIONALS ON BASE: THE ABOVE GATE INCIDENTS PLUS OTHER OFFICIAL DUTY CASES WHEREIN PHIL NATIONALS WERE DETAINED BY US AUTHORITIES FOR ALLEGED ILLEGAL OR OMPROPER CONDUCT THAT OCCURRED ON BASE FOCUSED ON THIS PROBLEM. MACARAIG COULD SEE VERY LITTLE EXCUSE OR AUTHORITY FOR ANY PROLONGED DETERNTION OF PHIL NATIONALS ARRESTED FOR ON-BASE OFFENSES OR INCIDENTS. MACARAIG SAID THAT OBVIOUSLY US MILITARY AUTHORITIES HAD RIGHT INITIALLY TO ARREST OR DETAIN PHIL NATIONALS SUSPECTED OF WRONGDOING WITHIN BASE AREA UNDER MBA, AS AMENDED, BUT STRESSED THAT APPROPRIATE PHIL LAW ENFORCEMENT PERSONNEL SHOULD BE CALLED IN TO ASSIST AS RAPIDLY AS POSSIBLE. HE ALSO SUGGESTED HAVING US SUPERVISORS OR OFFICERS IMMEDIATELY CALLED TO SCENE OF INCIDENT. AGAIN, HE STRESSED SOVEREIGNTY AND POLITICAL ASPECTS OF THIS PROBLEM, BUT HE POINTED OUT THAT EXPEDITIOUS INVOLVEMENT OF US LIMITED OFFICIAL USE

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MILITARY SUPERVISORY AND PHIL LAW ENFORCEMENT PERSONNEL SHOULD HELP PREVENT FILING OF SUPURIOUS CHARGES SUCH AS THOSE IN SOME OF THE OFFICIAL DUTY CASES UNDER DISCUSSION. SPECIFICALLY, HE REFERRED TO VARIOUS ALLEGATIONS OF ILL-TREATMENT IN SEVERAL CASES WHICH HE FELT

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COULD MORE EASILY HAVE BEEN REFUTED IF PHIL LAW ENFORCE-
MENT PEOPLE HAD BEEN PRESENT.

5. DEROGATORY REMARKS BY US PERSONNEL: A PARTICULAR
REMARK ALLEGEDLY MADE BY A US SERVICEMAN IN THE ACT OF
APPREHENDING A FILIPINO WAS A REPORTED STATEMENT TO
THE EFFECT THAT SINCE INCIDENT OCCURRED ON BASE GOP
COULD NOT HELP THEIR OWN NATIONAL. MACARAIG STATED HE
HOPED THAT SUCH A REMARK HAD NOT BEEN MADE BECAUSE HE
ASSURED US THE PHIL GOVT WAS INTERESTED AND WOULD
PROTECT ITS OWN NATIONALS. BOTH PANELS RECOGNIZED
THAT LAW ENFORCEMENT PEOPLE MAY NOT ALWAYS USE THE
MOST ELEGANT LANGUAGE AND AGREED THAT CONTINUAL STRESS
AND TRAINING ON THIS SUBJECT WAS NECESSARY.

6. PROBLEM OF SPURIOUS CHARGES: US PANEL EXPLAINED
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THAT PART OF PROBLEM WAS THAT WHEN A PHIL NATIONAL WAS
APPREHENDED FOR WRONGDOING ON BASE, HE WOULD FILE
UNFOUNDED CHARGES AGAINST THE PERSONNEL INVOLVED IN
THE HOPE THAT THEY WOULD BE PLACED ON INTERNATIONAL

HOLD AND THAT CHARGES AGAINST HIM WOULD BE DROPPED IN ORDER TO DISPOSE OF CASE. MACARAIG STRESSED THAT IF CHARGES ARE UNFOUNDED US AUTHORITIES SHOULD NEVER, REPEAT NEVER, GIVE INTO SUCH PRESSURE AS IT WOULD ONLY CREATE MORE PROBLEMS. IN THIS VEIN HE AGAIN REITERATED THAT THE QUICK INVOLVEMENT OF PHIL AUTHORITIES IN SUCH INCIDENTS, WHEN POSSIBLE, SHOULD MINIMIZE SUCH CHARGES, AND MAKE THEM EASIER TO DISPOSE OF. HE STATED DEPT OF JUSTICE'S UNDERSTANDING OF THIS PROBLEM AND ITS DESIRE TO COOPERATE AS MUCH AS POSSIBLE TO COPE WITH IT.

7. PROBLEM OF UNAVAILABILITY, WHEN NEEDED, OF PHIL LAW ENFORCEMENT OFFICIALS: US PANEL ALSO INDICATED THAT IT WAS SOMETIMES DIFFICULT TO FIND A PHIL LAW ENFORCEMENT OFFICIAL WHO WOULD TAKE APPROPRIATE RESPONSIBILITY. FORTHER, MANY INCIDENTS TAKE PLACE IN REMOTE BASE AREAS AT NIGHT. NEVERTHELESS, IT WAS AGREED THERE WAS A NEED TO DEVELOP CLOSER WORKING RELATIONS AND BOTH MILITARY AND LOCAL LAW ENFORCEMENT PEOPLE WOULD BE ENCOURAGED TO DEVELOP SUCH RELATIONSHIP TO ALLEVIATE PROBLEM.

8. COMMENT: THESE DISCUSSIONS WERE VERY USEFUL AND RESOLUTION OF ALL PENDING OFFICIAL DUTY CASES PARTICULARLY NOTEWORTHY. MACARAIG MADE IT CLEAR THE DEPT OF JUSTICE'S PROBLEMS WERE BASICALLY POLITICAL, NOT LEGAL. THE GOP DOES NOT QUESTION THE US RIGHT UNDER THE MBA, AS AMENDED, TO TAKE THE INITIAL ACTION INVOLVED, I.E., THE DETENTION OR ARREST OF THE PHIL NATIONAL. RATHER, IT IS THE SUBSEQUENT ACTIONS BY US PERSONNEL THAT CAN CAUSE POTENTIAL DIFFICULTIES. US MILITARY LEGAL AUTHORITIES ARE LOOKING INTO THE VARIOUS SUGGESTIONS DISCUSSED AT THE MEETING IN ORDER TO FIND WAYS TO ATTEMPT TO BE RESPONSIVE TO THE GOP CONCERNS. HOWEVER, WE CAN EXPECT THE GOP TO CONTINUE TO REQUEST CONSULTATIONS ON ANY FUTURE OFFICIAL DUTY CERTIFICATES THAT LIMITED OFFICIAL USE

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APPEAR TO INVOLVE QUESTIONABLE CONDUCT BY US MILITARY LAW ENFORCEMENT AUTHORITIES. IN DOING SO, GOP WILL BE UNDER NO ILLUSIONS THAT ITS NATIONALS ARE ALWAYS TELLING TRUTH, BUT FACED WITH CONTRADICTORY SET OF FACTS, GOP WILL PERFORCE SUPPORT ITS OWN NATIONALS UNLESS THEIR STORY IS PATENTLY ABSURD. THIS IS POLITICAL FACT. MOREOVER, IT IS PSYCHOLOGICAL FACT THAT INDIVIDUAL FILIPINOS REGULARLY EXERCISE RIGHT OF APPEAL FROM ANY AND ALL ADVERSE FINDINGS AGAINST THEM NO MATTER WHAT THE FACTS ARE; AND IT IS IN US INTEREST TO MAKE CERTAIN OUR VERSION OF FACTS CAN STAND UP TO

CLOSE EXAMINATION, IF NEED BE, IN CJIC CONTEXT.
THEREFORE, IF CORROBORATIVE EVIDENCE CAN BE OBTAINED
THROUGH INVOLVEMENT OF PHIL LAW ENFORCEMENT AUTHORITIES
IN APPROPRIATE CASES, IT WILL CLEARLY BE HELPFUL IN
MAKING UNCHALLENGEABLE OFFICIAL DUTY ASSERTIONS.

9. WHILE IT IS RECOGNIZED THAT INVESTIGATION OF SOME
CASES WILL BE MADE MORE DIFFICULT THIS WAY, BENEFITS
SHOULD BE SELF-EVIDENT. IN THIS REGARD, WE SHOULD ALL
BE AWARE OF THE CLOSE RELATIONSHIP THAT GOP PERCEIVES
BETWEEN THEIR CONCERNS OF IMMEDIATE INVOLVEMENT OF
PHIL LAW ENFORCEMENT PEOPLE AND CUSTODY RECEIPT PROBLEM.
IF WE EXPECT GOP TO IMMEDIATELY RELEASE MBA PERSONNEL
TO USG CUSTODY UNDER MBA PROVISIONS BUT FAIL TO RECI-
PROCATE WHEN WE DETAIN PHIL NATIONALS, IT CAN ONLY
WEAKEN OUR POSITION TO PROTEST WHEN THEY FAIL TO
EXPEDITIOUSLY HONOR A CUSTODY RECEIPT. IN THE PAST,
ONE REASON GIVEN BY PHIL LAW ENFORCEMENT PEOPLE FOR
NOT RELINQUISHING CUSTODY WHEN REQUESTED WAS THAT TO
DO SO DIRECTLY INTERFERES WITH THEIR INVESTIGATION.
THEREFORE, WE SHOULD BE CAREFUL NOT TO ATTEMPT TO
RELY ON THE SAME RATIONALE, OR IT MAY COME BACK TO
HAUNT US IN CUSTODY RECEIPT AREA.
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